

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:04

PLR-100732-08

Date:

July 01, 2008

### Legend

Parent =

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Country X =

Country Y =

Business A =

Business B =

Dear :

This letter responds to your December 28, 2007 request for rulings as to the federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the proposed transaction (described below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

### **Summary of Facts**

Parent, a Country X corporation, is the common parent of a group of corporations that wholly owns each of Distributing and Sub 1. Sub 1 wholly owns Sub 2, which wholly owns Sub 3. Sub 1, Sub 2, and Sub 3 are Country Y corporations.

Distributing, a domestic corporation, is common parent of an affiliated group of corporations that files a consolidated federal income tax return on a calendar-year basis. Distributing conducts Business A through its wholly-owned subsidiary, Sub 4.

Distributing also wholly owns Controlled, a domestic corporation that conducts Business B.

Financial information has been submitted indicating that Business A (as conducted by Sub 4) and Business B (as conducted by Controlled) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years preceding the proposed transaction.

Distributing management has determined that the proposed transaction will serve the corporate business purpose of fit and focus.

### **Proposed Transaction**

In order to achieve the corporate business purpose, Distributing has proposed the following transaction (the "Proposed Transaction"):

- (i) Distributing will contribute to Controlled certain assets related to Controlled's Business B in constructive exchange for additional Controlled stock and Controlled's assumption of liabilities related to the transferred assets (the "Contribution").
- (ii) Distributing will distribute all of the Controlled stock to Parent (the "Distribution").
- (iii) Parent will transfer the Controlled stock to Sub 1 (the "Post-Spin Contribution 1").
- (iv) Sub 1 will transfer the Controlled stock to Sub 2 (the "Post-Spin Contribution 2").
- (v) Sub 2 will transfer the Controlled stock to Sub 3 (the "Post-Spin Contribution 3"). (Steps (iii)-(v), collectively, the "Post-Spin Contributions").

In connection with the Proposed Transaction, Distributing, Controlled, and their respective subsidiaries may enter into several agreements relating to the separation of Business B and certain continuing transactions between the companies.

### **Representations**

The following representations are made with respect to the Contribution and Distribution:

(a) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(b) Distributing, Controlled, and Parent will each pay their respective expenses, if any, incurred in connection with the Distribution.

(c) Following the Distribution, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.

(d) The Distribution is being carried out for the corporate business purpose of fit and focus.

(e) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(f) No intercorporate debt will exist between Distributing (or any of its subsidiaries) and Controlled (or any of its subsidiaries) at the time of, or after, the Distribution, other than intercompany loans or obligations that have arisen, or will arise, between the parties in the ordinary course of business or as a result of the continuing transactions. The indebtedness owed by Controlled to Distributing, if any, after the Distribution will not constitute stock or securities.

(g) Payments made in connection with the continuing transactions between Distributing and Controlled, or their respective subsidiaries, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except for services provided at cost consistent with pricing methods permitted under § 482.

(h) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Furthermore, Distributing's excess loss account, if any, with respect to Controlled common stock or the excess loss account that Distributing may have in the stock of another member that is required to be taken into account by § 1.1502-19(g) will be included immediately before the Distribution.

(i) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(j) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold Distributing stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(k) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold Controlled stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock, that was either acquired by (i) purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(l) Neither Distributing nor Controlled is a disqualified investment corporation within the meaning of § 355(g)(2).

(m) Any liabilities assumed (as determined under § 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(n) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing in the Contribution each equaled or exceeded the sum of the liabilities assumed (as determined under § 357(d)) by Controlled in the contribution plus any liabilities to which the transferred assets were subject.

(o) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

(p) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(q) The five years of financial information submitted on behalf of Business A as conducted by Sub 4 (a member of the Distributing separate affiliated group (the

“SAG”) as defined in § 355(b)(3)(B)) is representative of the present business operations of Business A as conducted by Sub 4, and with regard to Business A, there have been no substantial operational changes since the date of the last financial statements submitted.

(r) The five years of financial information submitted on behalf of Business B as conducted by Controlled is representative of its present operation, and there have been no substantial operational changes since the date of the last financial statements submitted.

(s) Neither Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, Distributing has been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the Distribution.

(t) Neither Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, Controlled has been the principal owner of the goodwill and significant assets of Business B and will continue to be the principal owner following the Distribution.

### **Rulings**

Based solely on the information submitted and the representations made, we rule as follows on the Contribution and Distribution:

(1) The Contribution, followed by the Distribution, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” within the meaning of § 368(b).

(2) No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).

(4) The basis of each asset received by Controlled will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).

(5) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing held in that asset (§ 1223(2)).

(6) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)).

(7) No gain or loss will be recognized by (and no amount will be includible in the income of) Parent upon the receipt of Controlled stock in the Distribution (§ 355(a)(1)).

(8) The aggregate basis of the Distributing stock and the Controlled stock in the hands of Parent immediately after the Distribution will equal the aggregate basis of the Distributing stock held by Parent immediately before the Distribution, allocated between the stock of Distributing and Controlled in proportion to the fair market value of each immediately following the Distribution in accordance with § 1.358-2(a) (§ 358(b)(2) and (c)).

(9) The holding period of the Controlled stock in the hands of Parent will include the holding period of the Distributing stock on which the Distribution is made, provided the Distributing stock was held as a capital asset on the date of the Distribution (§ 1223(1)).

(10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10 and 1.1502-33.

(11) Provided that the Distribution qualifies as a § 355 distribution, no withholding shall be required under §§ 1441 and 1442 (§ 1.1441-3(c)).

### **Caveats**

No opinion is expressed about the tax treatment of the proposed transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the proposed transaction satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)); (iii) whether the proposed transaction is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7); (iv) the federal income tax

consequences of the Post-Spin Contributions; or (v) the federal income tax consequences of any post-distribution cost-based transactions.

### **Procedural Statements**

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

In accordance with a power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate )